Aircraft Specialties, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. *Case No. 7–CA–4528. September 18, 1964*

DECISION AND ORDER

On June 15, 1964, Trial Examiner C. W. Whittemore issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of the Act and recommending that Respondent cease and desist therefrom and take certain affirmative action, as set forth in the attached Decision. Thereafter, Respondent filed exceptions and a supporting brief.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner and hereby orders that Respondent, Aircraft Specialties, Inc., its officers, agents, successors and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following addition: The following sentence is added to Section 2(a) of the Trial Examiner's Recommended Order: "Notify Ray Hanchett, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces."

[1] The Respondent's request for oral argument is denied, because, in our opinion, the record, including the exceptions and brief, adequately sets forth the issues and positions of the parties.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed by the above-named labor organization on January 16, 1964, the General Counsel of the National Labor Relations Board on March 6, 1964,

issued his complaint and notice of hearing. The Respondent thereafter duly filed its answer. The complaint alleges and the answer denies that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. Pursuant to notice, a hearing was held in Lapeer, Michigan, on April 28, 1964, before Trial Examiner C. W. Whittemore.

At the hearing all parties were represented and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Briefs have been received from General Counsel and the Respondent.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Aircraft Specialties, Inc., is a Delaware corporation, with office and place of business in Lapeer, Michigan, where it is engaged in the manufacture, sale, and distribution of aircraft and automotive mechanics' hand service tools and related products.

During the year ending December 31, 1963, the Respondent purchased and caused to be transported to its Lapeer plant goods and materials valued at more than $50,000, from points outside the State of Michigan. During the same period it shipped products valued at more than $100,000 directly to points outside the State of Michigan.

The Respondent is engaged in commerce within the meaning of the Act.

II. THE CHARGING UNION

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) AFL–CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and major issues*

The chief issue raised by the complaint stems from the Respondent's failure to sign a contract with the Charging Union, following a Board certification of the Union as the exclusive representative of employees in an appropriate unit, and after many months of negotiations. It is undisputed by counsel for the Respondent, who was spokesman for the Respondent during the latter part of the negotiations, that on October 17, 1964, he and the union negotiators had reached complete agreement as to a contract. It is likewise undisputed that his principal, Mrs. Zeta Shaw, refused to sign the agreement she had authorized her counsel to negotiate.

Also involved is the summary discharge of Ray Hanchett, for many years an employee, an official of the union local, and active as an employee member of the negotiating committee.

B. *The refusal to bargain*

1. Relevant facts

Following a Board-conducted election the Charging Union was certified on April 17, 1963, as the exclusive representative of all the Respondent's employees in an appropriate unit of about 30 employees. After this certification, and at the request of the Union, about 10 negotiating meetings were held by the parties before October 17, 1963. During this series of meetings it appears that there was much give and take in the discussions of the Union's proposed contract. Some points were agreed upon, others were not.

Until September 29 an attorney by the name of Taylor was the spokesman for the Company, although Mrs. Zeta Shaw, an official of the corporation and the apparent head of the enterprise, was present at most of the meetings. Mrs. Shaw, it must be observed at the outset, is a lady of firm personal conviction and practically no hearing. The transcript of the proceedings amply supports both conclusions. Her resolution that no contract would be signed, however long the negotiations might continue, were expressed openly at the first meeting, in April.[1]

[1] Her denial that she made this statement at the opening meeting is not credited. It is undisputed that she told employee Hanchett, on January 8, 1964, under circumstances described more fully hereinafter, that no contract existed and there would be none. Furthermore, her own testimony candidly establishes that she had all along, refused, and still did, to recognize the Union as the exclusive representative of employees in the appropriate unit, as certified by the Board.

Taylor finally withdrew as spokesman for the Respondent—the reason not being revealed by the record but readily surmised from the obvious discomfiture of the present counsel—in dealing with Mrs. Shaw, during the course of the hearing.

At the September 24 meeting the Respondent was represented by both Ivan and Harry Meisner, the latter being counsel at the hearing. State and Federal mediators were also present, as well as Mrs. Shaw. This meeting, of course, was devoted principally to the task of bringing the new attorneys up to date as to what had gone on during the preceding months.

It is undisputed that at the October 17 meeting, however, all issues were resolved, and oral agreement on all points were reached by the union representatives and by Counsel Meisner. It is also undisputed that when the union representative suggested that they go to Mrs. Shaw, not present at the time, and inform her of the agreement, Meisner demurred, saying that Mrs. Shaw was "upset." Union Representative McIntyre quoted Meisner as saying, without contradiction, "Mrs. Shaw is quite upset. I'd rather you didn't bother her. I give you my word I'm speaking for the company and we have an agreement." It is further undisputed that the agreement was reached in the presence of both State and Federal mediators.

Meisner and McIntyre agreed that the latter was to put the agreement into writing, and that it was then to be submitted to him for possible corrections as to language and for signing.

The agreement, in writing, was given to Meisner on October 22, and was received in evidence without objection by the Respondent and with no testimony from Meisner to show that the document did not fully and accurately set forth the oral agreement which had been reached, in the presence of the mediators, on October 17.

On November 9 McIntyre called Meisner and asked if he was ready to sign. Meisner replied in the negative, claiming that some things needed clarification, although he had been too busy, apparently, to make certain, and suggested that they meet on November 19.

They met on November 19, and instead of the contract which had been agreed upon, Meisner presented McIntyre with a 22-page document, prepared by Mrs. Shaw, which was headed "Remarks in Reference to Agreement." "Remarks" they are indeed, and the Trial Examiner would be hard pressed to give those 22 pages a more narrow definition. In short, Mrs. Shaw voiced her objections to practically everything that had been agreed upon, and again set out her statement that she would recognize the Union only for its members. She objected to certain grievance procedures, asserting that the "present committeemen or its chairman" were not "versitale" [sic] enough, to know what was and what was not a grievance.

That the union representatives were somewhat puzzled by this document is understandable. The parties finally met again, for the last time on January 7. Not much was discussed except Mrs. Shaw's stout maintenance that she had no intention of recognizing the Union as the representative of the unit certified by the Board, but only of its members, and the Union's insistence that it was not prepared to renegotiate an entire contract, all of which had been agreed upon on October 17, 1963.

On January 9, 1964, announced to employees the day before, Mrs. Shaw put into effect a work-reduction of 1 hour per week, without informing or discussing with the Union this change. As a witness Mrs. Shaw succinctly expressed herself on this point as follows, when asked if she had notified the Union: "We don't have to . . . We don't have any contract . . . I don't intend to notify them."

Despite her assertion that there was no "contract," it is undisputed that all economic terms of the agreement reached on October 17 have in fact been put into effect. Nor is there any dispute that Meisner, like Taylor, had full authority to negotiate an agreement with the Union on behalf of the Respondent.

2. Conclusions

Since April 17, 1963, the Union has been, and continues to be, the exclusive bargaining representative of all employees in the appropriate unit certified by the Board:

All production and maintenance employees at the Respondent's Lapeer, Michigan, plant, including shipping employees and truckdrivers, excluding office clerical and plant clerical employees, professional employees, plant guards, and supervisors as defined in the Act.

The foregoing findings amply support the conclusion here made, that since July 17, 1963 (the date 6 months prior to the filing of the charge in this case), the Respondent has failed and refused to bargain collectively in good faith with the Union as required by the Act by: (1) refusing and failing to sign the agreement and understanding reached on October 17, 1963, and submitted in writing on November 9,

1963; (2) by refusing to recognize the Union as the representative of all employees in the above-described unit; and (3) by altering the hours of work in January 1964, unilaterally, without notification to or consultation with the Union.

The Respondent's contention, advanced in its brief, that because a full year has passed since the Union's certification it no longer represents the employees is clearly without merit.

By thus unlawfully refusing to bargain with the Union the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

C. *The discharge of Ray Hanchett*

Until suddenly discharged on January 9, 1964, 2 days after the final negotiating meeting, Ray Hanchett had apparently been a satisfactory employee for about 9 years.

On January 8, the same day the Respondent announced its unilateral change in working hours, Engineer Kaiser was put to work operating a press in the plant. Kaiser was not in the bargaining unit, yet had been assigned to work which was production. It is undisputed that when Hanchett, secretary of the negotiating committee and who had attended the negotiating meetings, called this fact to the attention of the plant superintendent, the latter promptly took Kaiser off that job—without any contention that Hanchett's suggestion had been without merit.

Within a few minutes, however, Mrs. Shaw descended upon Hanchett in the plant. She berated him in no uncertain terms. She demanded to know who was running the shop, he or the superintendent. When the employee agreed that the superintendent was running it, Mrs. Shaw declared, "Well, when I want somebody to run a press, you, McIntyre or Reuther aren't going to tell me how to run my business." Hanchett protested that he had no intention of it, explaining that he had not asked McDonald to remove Kaiser, but merely pointed out that under the contract this work belonged to production employees. Mrs. Shaw's comment was brief and to the point, "You don't have a contract and you're not going to have a contract."

The next morning Hanchett's card was not in the rack and he was called to the office by Byron Shaw, a young man whose precise relationship to Mrs. Shaw is not revealed by the record but who, according to her, supervised the men in the plant "as needed' and had her authority to discharge Hanchett—a discharge which she candidly admitted, "I was the one that started it."

Shaw at first told Hanchett he was suspended for 2 days because of the "poor attitude" he had displayed the day before. Hanchett protested that as a committeeman he had properly raised the question with the superintendent. Shaw declared that he had no such right, pointing out that there was no signed contract. He then demanded that Hanchett sit down, he wanted to talk to him The employee replied that he would do so if asked, but not when ordered, since he was then on his own and not the company's time. Shaw countered by declaring that he did not have to "ask" the employee anything, "I own this plant and I'm ordering you to sit down"—and then extended the suspension to 3 days. At about this time another employee, also on the committee, came to the office, having previously been asked to come in by Hanchett. Shaw promptly ordered this employee out of the office, warning him that if he did not go he would get the same treatment as Hanchett. Shaw then gave Hanchett a "week off," for arguing with him about his right to have a committeeman present. As Hanchett started out of the plant Shaw told him he could stand inside and wait for his wife to pick him up, since it was raining. Hanchett said he might as well go on outside, he might get the floor dirty if he stayed inside. Upon this remark Shaw discharged him.

Hanchett has not been reinstated.

It is plain from undisputed testimony that whatever slight Hanchett may have displayed to young Shaw's managerial position, whatever it may be, was precipitated by Shaw himself. His insistence that his "order" be obeyed—to sit down—when the employee was already on his own time, having been laid off, may reasonably be interpreted either as the act of unseasoned puerility or consistent with the planned design of accomplishing what Mrs. Shaw readily admitted she had "started"—the ultimate discharge.

While it is inferred, from remarks made to Hanchett by Mrs. Shaw, that she resented his being on the negotiating committee, and that this was a factor in the discharge, there can be no doubt but that the precipitating cause was her pointed objection to his carrying out his function as a committeeman, in raising a proper question with the superintendent. It is so found. This Trial Examiner has had occasion, with Board approval, to find unlawful a discharge under similar circumstances, in *Mrak Coal Company, Inc.*, 137 NLRB 1206. Consistent with that decision, it is

here found that Hanchett was discharged on January 9, 1964, to discourage union membership and activity, thereby interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It will be recommended that the Respondent offer employee Ray Hanchett immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he would have earned as wages from the date of the discrimination to the offer of full reinstatement, less his net earnings during this period, and in a manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and with interest on the backpay due in accordance with Board policy set out in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

It will further be recommended that, upon request, the Respondent, by its duly authorized representative, sign the contract submitted to it in writing on October 22, 1963, and in evidence herein as General Counsel's Exhibit No. 4. The Respondent has offered no credible evidence that this contract does not accurately set out the oral understanding and agreement reached by the parties on October 17, 1963. Upon request of the Union, however, the expiration date of said contract shall be changed from October 17, 1964, to the date 1 year from the date of actual signing of the contract

It will further be recommended that all employees, adversely affected by the unilateral change in working hours on January 9, 1964, be made whole for any loss of pay incurred as a result of that change. (See *Town & Country Manufacturing Company, Inc.*, 136 NLRB 1022.)

Finally, in view of the serious and extended nature of the Respondent's unfair labor practices, it will be recommended that it cease and desist from in any manner infringing upon the rights of employees guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating against employees as to tenure of employment to discourage membership in and activity on behalf of the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. All production and maintenance employees at the Respondent's Lapeer, Michigan, plant, including shipping department employees and truckdrivers, but excluding office and plant clerical employees, professional employees, plant guards, and supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By virtue of Section 9(a) of the Act, at all times since April 17, 1963, and continuing to date, the above-described labor organization has been the exclusive representative of all employees in the above-described appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By refusing to bargain in good faith with the above-named labor organization as the exclusive representative of all employees in the said unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the Trial Examiner recommends that the Respondent, Aircraft Specialties, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in and activity on behalf of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) AFL–CIO, or in any other labor organization by discharging, laying off, refusing to reinstate, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

(b) Refusing, upon request of the above-named labor organization, to execute the written agreement tendered to it on October 22, 1963.

(c) Altering wage or other working conditions without first consulting with the above-named labor organization.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action, to effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to Ray Hanchett, and make him whole for any loss of pay suffered by reason of the discrimination against him, in the manner set forth above in the section entitled "The Remedy."

(b) If so requested by the Union, forthwith sign the agreement tendered in writing to it on October 22, 1963, and upon request at an appropriate time bargain collectively with the said labor organization as the exclusive representative of the employees in the unit for which it is the bargaining representative and, if an understanding is reached, embody such understanding in a signed agreement.

(c) Make whole all employees for loss of wages suffered by reason of the unlawful reduction in working hours, as described herein.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary to determine the amounts of backpay due.

(e) Post at its plant in Lapeer, Michigan, copies of the attached notice marked "Appendix."[2] Copies of said notice, to be furnished by the Regional Director for the Region 7, shall, after being duly signed by its representative, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the said Regional Director, in writing, within 20 days from the date of the receipt of the Trial Examiner's Decision, what steps the Respondent has taken to comply therewith.[3]

[2] If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

[3] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT discourage membership in International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW)

AFL–CIO, or any other labor organization of our employees, by discharging, refusing to reinstate, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT refuse to recognize and bargain collectively with the above-named labor organization as the exclusive representative of all employees in the appropriate unit described below:

All production and maintenance employees at our Lapeer, Michigan, plant, including shipping employees and truckdrivers, but excluding office and plant clerical employees, professional employees, plant guards, and supervisors within the meaning of the Act.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act.

WE WILL offer immediate and full reinstatement to Ray Hanchett to his former or substantially equivalent position, without loss of seniority or other rights and privileges, and make whole him and all employees whose work hours were reduced on January 9, 1964, for any loss of pay suffered as a result of the unlawful action against them.

WE WILL, upon request of the above-named Union, execute the written agreement submitted to us on October 22, 1963, which embodies the oral understanding reached on October 17, 1963.

WE WILL, upon request, bargain collectively with the aforesaid labor organization as the exclusive representative of all employees in the above-described appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

AIRCRAFT SPECIALTIES, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

NOTE—We will notify Ray Hanchett, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 501 Book Building, 1249 Washington Boulevard, Detroit, Michigan, Telephone No. 963–9330, if they have any question concerning this notice or compliance with its provisions.

Cadillac Overall Supply Company *and* District 50, United Mine Workers of America, Petitioner. *Case No. 7–RC–5829. September 18, 1964*

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election, and election by secret ballot was conducted on July 24, 1963, under the direction and supervision of the Regional Director for Region 7, among the employees in the appropriate unit. At the conclusion of the balloting, the parties were furnished with a tally of ballots which showed that, of approximately 36 eligible voters, 30 cast ballots, of which 1 was cast for the Petitioner, 12 were cast for the Intervenor,[1]

[1] Laundry and Linen Drivers Union, Local 285, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., intervened in this proceeding.